IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 16311 of 2004

Between:

1 Donti Chandra Goud, S/o. Narasa Goud,
Mandal President, Sivampet Mandal, R/o. Gomaram, Sivampet Mandal

Medak District.
2 B. Pentaiah, S/o. Rangaiah,
M.P.T.C. Peddagottimukkala, R/o. Peddagottimukkala,
Sivampet Mandal, Medak District.
3 Parshaboina Laxmi, W/o. Narsaiah,
MPTC Parkibanda, R/o. Goutojiguda, H/o. Parkibanda, Sivampet

Mandal, Medak District.
4 Adla Vimalabai, W/o. Narsinga Rao,
MPTC, Pambanda (V), R/o. Pothulboguda Village, Sivampet Mandal

Medak District.

..... PETITIONERS

AND

1 The Government of Andhra Pradesh, Rep by its Principal Secretary,
Panchayat Raj & Rural Development, Secretariat, Hyderabad.
2 The Revenue Divisional Officer, Sanga Reddy at Medak.
3 The Mandal Parishad Development Officer, Sivampet, Medak District.
4 R. Muthyam Reddy S/o. Ram Krishna Reddy
Mandal Praja Parishad Office, Shivampet Mandal, Medak District.
5 G. Ashok Kumar S/o. Lingaiah Goud
Mandal Praja Parishad Office, Shivampet Mandal, Medak District.
6 M. Nagaiah S/o. Ramaiah
Mandal Praja Parishad Office, Shivampet Mandal, Medak District.
7 Lambadi Rambabu S/o. Samya
Mandal Praja Parishad Office, shivampet Mandal, Medak District.
8 Ch. Venkat Ram Reddy S/o. Gopal Reddy
Mandal Praja Parishad Office, shivampet Mandal, Medak District.

9 Vanjari Srinu S/o.Anjaiah
Mandal Praja Parishad Office, shivampet Mandal, Medak District.
10 Patnam Rajamma W/o. Kistaiah
Mandal Praja Parishad Office, shivampet Mandal, Medak District.

(RR 4 to 10 impleaded as per court order dt. 11-10-2004 in WPMP 22554 of 2004.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of "Writ of Mandamus" declaring the action of the Respondents in issuing proceedings in Lr.NO. B1/1725/04, dated 30-8-2004 fixing date for verification of the resolution in connection with the Motion of No Confidence against me dated 16-9-2004 as arbitrary, illegal, unjust, if necessary by declaring Rule 8 of the AP Panchayat Raj Rules relating to Motion of No Confidence in Upa Sarpanch of Gram Panchayat of Vice President or President or Mandal Parishad or Vice Chairman and Chairman of Zilla Parishad issued through G O Ms.NO. 200, dated 28-4-1998 as arbitrary, illegal, unjust, unconstitutional in violation of the provisions of AP Panchayat Raj Act, particularly with reference to Sec.156 and 245 (1), in violation of the fundamental rights guaranteed under Articles 14, 19 and 21 of the constitution of India consequentially set aside the Form V Notice issued in Proceedings No. B1/1725/2004, dt. 30-8-2004 by directing the Respondents not to give effect to the same.

Counsel for the Petitioners: MR.K.R.PRABHAKAR

Counsel for Respondents 1 to 3 : G.P. for Panchayat Raj

Counsel for Respondents 4 to 10 : Sri G.Shiva Kumar Goud

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16311 OF 2004

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ORDER:

The first petitioner is the President and petitioners 2 to 4 are the Members of Mandal Parishad Territorial Constituency of Sivampet Mandal in Medak District. They filed the writ petition praying the following relief.

> … this Hon'ble Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of "**Writ of Mandamus"** declaring the action of the Respondents in issuing proceedings in

Lr.No.B/1725/04, dated 30/8/2004 fixing a date for verification of the resolution in connection with the Motion of No Confidence against me dated 16/9/2004 as arbitrary, illegal, unjust, if necessary by declaring Rule 8 of the A.P.Panchayat Raj Rules relating to Motion of No Confidence in Upa Sarpanch of Gram Panchayat or Vice President or President or Mandal Parishad or Vice Chairman and Chairman of Zilla Parishad issued through G O Ms.No.200 dated 28/4/1998 as arbitrary, illegal, unjust, unconstitutional in violation of the provisions of A.P.Panchayat Raj Act, particularly with reference to Sec.156 and 245(1), in violation of the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India consequently set aside the Form V Notice issued in proceedings No.B/1725/2004, dt.30/8/2004 by directing the Respondents not to give effect to the same and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

The fact of the matter is not much in dispute. In the elections conducted in July, 2001, the petitioners were elected Mandal Parishad Territorial Constituency, Sivampet Mandal as Members belonging to Congress party. In the subsequent election held, the first petitioner was elected President, and two Members of Telangana Rashtra Samithi (TRS) and one Member of C.P.I supported the candidature of the first petitioner. So to say, 7 (seven) out of 4 (four) members supported the petitioner. As many as seven members gave a notice of their intention to make a motion expressing want of confidence in the first petitioner under sub-section (1) of Section 245 of the A.P.Panchayat Raj Act, 1994 (the Act, for brevity). The said notice was given in Form II read with Rule 2 of the Rules Relating to Motion of No-confidence Against Upa-Sarpanch of the Gram Panchayat, or President or Vice-President of Mandal Parishad, or Chairman or Vice-Chairman of the Zilla Parishad (hereafter called, the Rules), issued by the Governor of Andhra Pradesh, vide orders in G.O.Ms.No.200 dated 28.04.1998, for moving motion of no-confidence. The second respondent thereafter served a notice of meeting on 16.09.2004 convened for the purpose of considering the notice of no-confidence. The proposed motion of no-confidence submitted by seven members was also enclosed to
Form V. This notice is assailed in the writ petition contending that the members who moved the motion of no-confidence are making all false allegations, so as to disqualify the first petitioner, that such a notice of no-confidence is not contemplated under Section 245 or 249 of the Act and therefore the same is invalid. It is also contended that Rule 8 of the Rules permits the reading of the motion of no-confidence and putting it to vote without any debate and the same, therefore, violates the rights of the petitioners under Articles 14, 19 and 21 of the Constitution of India and undemocratic.

This Court while admitting the writ petition on 13.09.2004 refused to stay the meeting and observed that the meeting shall go on but the result of the same is subject to the result of the writ petition. The respondents 4 to 10, who are the M.P.T.C. members, who served notice of intention to move a motion expressing want of confidence in the first petitioner were impleaded as respondents 4 to 10 by orders made by this Court in W.P.M.P.No.22554 of 2004 dated 11.10.2004. On that

day, the learned counsel for the petitioners requested for time for making submissions on the main writ petition itself. Again the matter was listed on 02.11.2004, when a request was made on behalf of the learned counsel for the petitioners for adjournment, the matter was adjourned to 09.11.2004. On this day also, learned counsel for the petitioners
Sri K.R.Prabhakar was absent and his junior counsel appeared and made submissions.

In the counter affidavit filed by the second respondent, it is stated that R.Mutyam Reddy and six other M.P.T.C. members, who are respondents 4 to 10, gave a notice in Form II under Section 245(2) of the Act to the second respondent for moving no-confidence motion against the first petitioner. As per the provisions, 50 per cent of the members can move a no-confidence motion. Therefore, six members would be sufficient, whereas seven members issued such notice. The Mandal Parishad Development Officer, Sivampet was asked to verify the signatures of the M.P.T.C. members, who signed Form II, with reference to office records and to report the facts for taking further action. The Mandal Parishad Development Officer submitted report on 28.08.2004 stating that the signatures of M.P.T.C. members are correct. Again after verifying the signatures, the second respondent issued notice in Form V under Section 245(1) of the Act convening the meeting on 16.09.2004 at 11.00 a.m. at the office of the Mandal Parishad Development Officer, Sivampet. Under the provisions of law, the second respondent is not competent to examine the reasons for members issuing a notice of no-confidence, the second respondent has convened the meeting for consideration of the motion. The motion moved by the members is not in relation to Section 156 of the Act, whereas Section 249 of the Act deals with the power of the Government to remove the Sarpanch, President or Chairman, as the case may be. These two provisions have no relevance to this case.

On 16.09.2004, the meeting is convened and out of eleven members of Mandal, seven members attended the meeting and voted in favour of the motion without any debate by showing hands and the no-confidence motion against the first petitioner is carried and accordingly the minutes of the special meeting was recorded. The second respondent has taken action in accordance with law. While denying the allegation of the petitioners, it is further stated that as per Section 245(2) of the Act read with Rule 11 of the Rules, the quorum for a meeting convened to consider the motion of no-confidence is two-thirds of the total number of members of the Mandal, that two-thirds of the members come to 7.33, that as per Rule 11 of the Rules any fraction below 0.5 should be ignored and any fraction of 0.5 and above shall be taken as one. Therefore, 7.33 has to be reckoned as seven only ignoring 0.33, which is below 0.5.

Respondents 4 to 10 filed counter affidavit stating that the writ petition on vague and flimsy grounds is not maintainable and that the action taken by the second respondent is in accordance with law. The petitioners have not filed any reply affidavit denying the averments of the second respondent or the averments made by the respondents 4 to 10 in their respective counter affidavits.

The learned counsel for the petitioners submits that Rule 8 of the Rules, which does not permit the debate and only permits voting on the motion of no-confidence by raising hands is ultra vires and contrary to provisions of Section 245 of the Act. He also would urge that the said provision is arbitrary and illegal. This Court asked for elucidation and substantiation of these two submissions with reference to the pleadings and provisions of law. The learned counsel for the petitioners did not make any attempt. It must be remembered that when any provision of law or executive action is challenged as arbitrary and illegal or ultra vires, petitioner has to make out a case in support of such ground and mere mentioning of such grounds in the affidavit accompanying the writ petition, would not be sufficient requirement. Even in the affidavit accompanying the writ petition, this Court is not able to discern any such elucidation in support of the ground urged. On the strength of the vague ground taken, it is not possible for this Court to hold that Rule 8 of the Rules is ultra vires. Further in the considered opinion of this Court, putting a motion by show of hands is a well recognised method of democratic expression of opinion and merely because a motion is not put to debate, that itself cannot be a ground to hold the same as violative of Articles 14, 19 and 21 of the Constitution of India. The right to contest and vote in election to Panchayat bodies is a statutory right and the enjoyment of such right can always to be regulated by the statute itself. As the Legislature has provided different modes of disqualifying elected President and also for removal of such President, the rule making authority have not provided for any debate on motion of no-confidence. The absence of such debate does not render the Rule ultra vires or arbitrary.

In so far as the impugned notice in Form V issued by second respondent convening the meeting on 16.09.2004 is concerned, no attempt is made by the learned counsel for the petitioners to sustain the prayer for its invalidation. The writ petition is misconceived and this Court does not find any merit in the writ petition.

The writ petition, for the above reasons, is accordingly dismissed without any order as to costs.

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(V.V.S.RAO,J)

09.11.2004.

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To

1. The Principal Secretary, Panchayat Raj & Rural Development, Government of Andhra Pradesh, Secretariat, Hyderabad.

2. The Revenue Divisional Officer, Sanga Reddy at Medak.

3. The Mandal Parishad Development Officer, Sivampet, Medak District.

4. 2 CCs to the G.P. for Panchayat Raj, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies.